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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

A.W.,

Plaintiff and Appellant,

v.

I.C.,

Defendant and Respondent.

B307592

(Los Angeles County  
Super. Ct. No. 18STPT03197)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Shelley Kaufman and Alison M. MacKenzie,  
Judges. Affirmed.

The Appellate Law Firm, Berangere Allen-Blaine and  
Aaron Myers for Plaintiff and Appellant.

The Law Offices of Kurt Bier and Kurt Bier for Defendant  
and Respondent.

This appeal stems from a family law proceeding between A.W. (Father) and I.C. (Mother) regarding the custody of their minor child, M.W. Father appeals the family court's order granting Mother's request that M.W. move with her to Washington, D.C. Father argues the court reversibly erred when, in granting this request, the court "ignored" the opinion testimony of a custody investigator that Mother was relocating to Washington, D.C. as a means of keeping M.W. away from Father. But the trial court was entitled to deem the investigator's testimony not credible, and substantial evidence supports the court's finding that Mother's move was not in bad faith. Father identified no other basis on which he challenges the court's overall conclusion that the move was in M.W.'s best interest. Accordingly, we affirm.

## **FACTS AND PROCEEDINGS BELOW**

### **A. The Parties' Relationship and Background**

The parties are both originally from the east coast and began their relationship in 2011 while both were living in Washington, D.C. They moved to California so Mother could attend graduate school at the University of California, Los Angeles (UCLA), and so Father could pursue a career in the entertainment industry. In Los Angeles, Father worked as a freelance information technology expert and pursued work as a producer and director. The parties never married, but had one child together, M.W., born in December 2015.

The parties' relationship ended around December 2018. Specifically, in November 2018, Father, Mother, and M.W. all traveled from their home in California to the east coast, "first stay[ing] with the paternal grandmother and paternal aunt

in Virginia. [Mother] then traveled to Connecticut with [M.W.] to visit her family. [Father] returned to Los Angeles, expecting [Mother and M.W.] to follow in a few days. . . . While [Mother] was in Connecticut at her parent's home, she advised [Father] she did not want to stay with him and needed some time to think. . . . [¶] After a few days, [Father] flew out to Connecticut. [Mother] agreed for [Father] to take [M.W.] to Virginia for a few days while she and [Father] [tried to] address their issues. Without telling her, [Father] flew back to Los Angeles with [M.W.] and stayed the first night in a hotel until he could go to court and seek custody orders."

At an ex parte emergency hearing in California, the court granted Mother primary legal and physical custody of M.W., with gradually increased parenting time for Father, thereafter, beginning at six hours per week. M.W. was ordered not to leave California. Mother therefore returned to Los Angeles, but did not resume a relationship with Father.

### **B. Mother's Relocation Request and Evidence Presented at Trial**

At some point thereafter, Mother requested she be permitted to relocate with M.W. to Washington, D.C., identifying as her reason for the move that she had obtained employment there. Before the court ruled on the request, in July 2019, Mother moved to Washington, D.C., and began working in that position, at which point Father took over primary care of M.W. in California.

The court held a trial on Mother's relocation request and all other custody issues over the course of several days in October and November 2019.

**1. *Mother's and Father's Testimony  
Regarding Mother's Relocation to  
Washington, D.C.***<sup>1</sup>

Both Mother and Father testified at trial. Mother testified that her move to Washington, D.C., was primarily motivated by her having obtained a job there in her field of work. Mother had studied political science and international affairs as an undergraduate, worked at the World Bank in Washington, D.C., for three years, and completed a master's degree in public policy at UCLA. Thereafter, she worked on and off as a consultant in Los Angeles, primarily working from home to facilitate caring for M.W., who was then an infant. According to Mother, after M.W. turned two years old, Mother began applying for full time jobs in Los Angeles in her field (public policy and international development), but discovered opportunities in California were extremely limited. At some point after Mother and Father's relationship had ended, Mother was offered her current salaried position with Global Integrity in Washington, D.C., a position that fit squarely within her field of work and training.

Mother testified she had been open with Father that her plan had always been to eventually move back to the east coast,

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<sup>1</sup> We summarize only the key testimony at trial that is relevant to the sole focus of Father's appeal: the purpose of Mother's move to Washington, D.C. We do not attempt to summarize the extensive testimony offered by witnesses on various other issues, such as the parties' respective relationships with M.W., financial issues, the tenor of the parties' relationship and their treatment of each other, or the parties' respective fitness to care for M.W.

both because of the job prospects in her field there and because much of her family lived there.

Father testified that Mother had intentionally refused to find full time work in the Los Angeles area. She had refused the assistance of Father's friend to find work, including a job offer at a television network. He believed Mother had decided to move back to Washington, D.C., two years before she did so. He noted that Mother had terminated the lease on the parties' apartment before the family's November 2018 trip to the east coast.

## ***2. Independent Evaluator's Testimony Regarding Mother's Relocation***

The court also heard testimony from Linda Hayes, a licensed marriage and family therapist and licensed clinical social worker, whom the parties had stipulated would "conduct a private, solutions-focused evaluation, akin to a two-day private Parenting Plan Assessment." Specifically, the parties agreed Hayes would evaluate "whether joint physical custody would be appropriate if the parties live in the same geographic area and if they do not, who should be awarded primary physical custody and what type of parenting plan would be in the best interest of the child."<sup>2</sup> Hayes prepared an "abbreviated report of her

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<sup>2</sup> The parties noted in their stipulation that Father had "participated in one hour of parenting class and one hour of individual counseling with . . . Hayes" before she took on her consulting role in the custody proceeding, and that Father "disclosed this information to Mother" and "Mother requested the parties use . . . Hayes for the purposes of this evaluation" and "agreed to waive any conflict of interest." The stipulation further indicates that "Hayes underst[ood], from speaking with counsel,

findings and conclusions” that included “recommendations” for the custody arrangement if Mother continued living in Washington, D.C. (Capitalization omitted.)

Ultimately, Hayes recommended M.W. remain in Los Angeles with Father. Hayes opined Mother had put her own need to reside in Washington, D.C., over M.W.’s need “to love and experience both parents on a frequent and continuous basis.” Hayes viewed Mother’s decision to move to Washington, D.C., as narcissistic and not guided by M.W.’s best interests.

In addition to proposing a specific custody and visitation arrangement, Hayes testified about various other opinions and conclusions that informed her evaluation and recommendations.<sup>3</sup> Hayes repeatedly testified that Mother’s move to Washington, D.C., was “premeditated,” and that her desire to take M.W. was an effort “for [Father] not to have access to the minor child.” She based this conclusion in part on statements by Mother’s friend, Paulina Migalska, who told Hayes that Mother had been planning for “multiple months, maybe six months” to leave California. According to Hayes, Migalska also stated that Mother and Mother’s family “had been planning for many months about how Mother would take [M.W.] away from the father.”<sup>4</sup>

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that her role [is] as a neutral and she affirmed she can provide services for the scope of [the] evaluation without any bias.”

<sup>3</sup> As previously noted, the majority of these are not relevant for our purposes, given the limited nature of Father’s appeal, and we do not attempt to summarize them here.

<sup>4</sup> Migalska also testified at trial, but on other topics. She was not asked to and did not offer testimony to the effect of the statements Hayes attributed to her.

Hayes was also skeptical of Mother's explanation that her move was motivated by difficulty finding work in Mother's field in the Los Angeles area. Hayes based this skepticism in part on a call with the executive director of the UCLA department of public policy, who Hayes testified had indicated that the vast majority of graduates with Mother's degree were employed.<sup>5</sup> Hayes expressed concerns about Mother's veracity and forthrightness in other respects as well. She believed Mother had not been forthcoming with information that would allow Hayes to verify certain claims Mother had made about her new job. Hayes believed that Mother was trying to prevent Hayes from speaking to Mother's supervisor because the call would contradict Mother's previous statements.

Hayes expressed no such concerns about Father's veracity or forthrightness. To the contrary, she appeared to accept Father's explanation that his 2003 kidnapping conviction based on allegations of domestic violence in a previous relationship was a misunderstanding, not the result of criminal conduct. Specifically, Hayes found "credible" Father's explanation that he "was unfairly incarcerated based on the lies of the victim and because of the racist justice system," citing as the reason for this belief Father's explanation of the incident and Hayes's phone interview with "the sheriff who got to know [Father] during [his

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<sup>5</sup> This testimony was not offered for the truth of the matters purportedly asserted by the executive director, and Hayes's testimony also does not indicate where the executive director had indicated such graduates found employment.

time in] the prison, and . . . said Father does not fit the profile at all of somebody who would . . . perpetrate domestic violence.”<sup>6</sup>

### **C. The Statement of Decision and Judgment**

In its statement of decision that formed the basis for the final judgment, the court found that frequent contact between M.W. and both parents was in M.W.’s best interest and awarded the parties joint physical custody of M.W. The court granted Mother’s move-away request, permitting M.W. to live with Mother in the Washington, D.C., area, with visitation for Father on the first and third weekends of each month (Thursday at noon to Tuesday at noon) and at all other agreed upon times. If Father could not travel to the Washington, D.C., area on the first weekend of the month, his parents could pick M.W. up on that Saturday so that Father could have virtual visitation with her. Father also was entitled to visitation during certain holidays and the summer. The court also identified a specific schedule for sharing custody if both parties lived in the same geographical area.

In reaching this conclusion, the court specifically found that Mother’s move to Washington, D.C., had not been in “bad faith”—that is, that it had not been even partially motivated by a desire to restrict Father’s time with M.W. In so finding, the court deemed credible Mother’s testimony that Father knew she had always wanted to return to the east coast, and that Mother

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<sup>6</sup> By contrast, Hayes concluded that Mother’s filing a request for a restraining order against Father was “strategic” because it was based on alleged conduct in Connecticut, and Mother did not file the request until Father brought M.W. back to California.

had moved in July 2019 because she was offered a position in the field for which she had been trained. The trial court further credited Mother's assertion that jobs in this field were difficult to obtain in Los Angeles. Thus, the court concluded, Mother's reason for moving was not to interfere with Father's parenting time, but rather was to advance her career and provide for M.W.

The court found Hayes's testimony to the contrary not credible. Specifically, the court noted that, although a custody evaluator's assessment can be a "critical piece of evidence," "Hayes demonstrated a lack of objectivity as to [Father's] credibility," citing specifically her assessment of his kidnapping conviction, in which Hayes suggested Father was innocent, despite her not having reviewed any materials from the criminal case. "This cause[d] the [c]ourt to question . . . Hayes'[s] objectivity in conducting the evaluation and making her recommendations." The court further concluded that, although Hayes "seemed to place all the blame" on Mother with respect to the disruptive manner in which the parties separated and handled custody issues, "[the] [c]ourt [found] . . . that both parents in their emotional state did not put M.W. first in making decisions about where M.W. should stay." The court then explained in detail its analysis of the relevant factors for a relocation request under *In re Marriage of LaMusga* (2004) 32 Cal.4th 1072, 1101 (*LaMusga*), which the parties agree on appeal provides the applicable law, and concluded that granting the request on the terms noted above was in the best interest of M.W.

The court entered final judgment consistent with the statement of decision, and Father appealed.

## DISCUSSION

### A. Applicable Law and Standard of Review

“A parent entitled to the custody of a child has a right to change the residence of the child, subject to the power of the court to restrain a removal that would prejudice the rights or welfare of the child.” (Fam. Code, § 7501, subd. (a); accord, *In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32 (*Burgess*).) The trial court must rule on such a relocation request by assessing “‘the effects of relocation on the “best interest[s]” of the minor children’” under the unique circumstances of each particular case. (*F.T. v. L.J.* (2011) 194 Cal.App.4th 1, 21 (*F.T.*), quoting *Burgess, supra*, 13 Cal.4th at p. 34.) “Among the factors that the court ordinarily should consider when deciding whether to modify a custody order in light of the custodial parent’s proposal to change the residence of the child are the following: the children’s interest in stability and continuity in the custodial arrangement; the distance of the move; the age of the children; the children’s relationship with both parents; the relationship between the parents including, but not limited to, their ability to communicate and cooperate effectively and their willingness to put the interests of the children above their individual interests; the wishes of the children if they are mature enough for such an inquiry to be appropriate; the reasons for the proposed move; and the extent to which the parents currently are sharing custody.” (*LaMusga, supra*, 32 Cal.4th at p. 1101.)

With respect to the “reasons for the proposed move” factor, “a custodial parent is not required to show a planned relocation is necessary” and “a custodial parent’s reasons for a proposed move should be considered by a trial court only when

‘one reason for the move is to lessen the child’s contact with the noncustodial parent . . .’ and then only in considering that factor with all the relevant factors in determining whether a change in custody would be in the child’s best interests.” (*F.T.*, *supra*, 194 Cal.App.4th at p. 23, italics omitted.)

In reviewing a trial court’s ruling on such a custody relocation request, we generally apply the deferential abuse of discretion standard, asking “whether the trial court could have reasonably concluded that the [relocation] order in question advanced the ‘best interest’ of the child.” (*LaMusga*, *supra*, 32 Cal.4th at p. 1087.) To the extent the trial court’s ruling is based upon a factual determination, however, that ruling is subject to review for substantial evidence. (See *In re Marriage of Fajota* (2014) 230 Cal.App.4th 1487, 1497 “[w]e review custody and visitation orders for an abuse of discretion, and apply the substantial evidence standard to the court’s factual findings”]; see, e.g., *Burgess*, *supra*, 13 Cal.4th at p. 32 [noting abuse of discretion standard applicable to reviewing relocation order, but applying substantial evidence standard to underlying factual determinations].)

**B. Substantial Evidence Supports the Court’s Factual Finding Regarding Mother’s Relocation and Father Identifies No Other Potential Basis For Reversal**

Appellant argues that the court reversibly erred because it “ignored th[e] conclusion” of investigator Hayes that Mother’s plan to relocate with the child was in “ ‘bad faith’ and that the move was ‘premeditated.’ ” Father does not challenge the court’s judgment or assessment of M.W.’s best interests on any other basis; he relies entirely on his contention that the court’s factual

finding regarding the motive for Mother's relocation is not supported by substantial evidence. We disagree.

In reviewing for substantial evidence, we may not disturb the trial court's finding if, upon examination of the entire record, there is substantial evidence, contradicted or uncontradicted, to support the finding. (*People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 681; *In re Albert T.* (2006) 144 Cal.App.4th 207, 216 (*Albert T.*)) "[W]e examine the whole record in a light most favorable to the findings and conclusions of the [lower] court . . . . [Citation.] We must resolve all conflicts in support of the determination and indulge all legitimate inferences to uphold the court's order." (*Albert T., supra*, at p. 216.)

Here, far from "ignor[ing]" Hayes's assessment that Mother's move was in bad faith, the court instead discussed it in detail and concluded it was not credible, choosing instead to believe Mother's contrary testimony. In reviewing for substantial evidence, we "defer to the lower court on issues of credibility of the evidence and witnesses" (*Albert T., supra*, 144 Cal.App.4th at p. 216), unless the testimony credited by the court was inherently implausible in light of the entire record. (See *People v. Jones* (1990) 51 Cal.3d 294, 314; accord, *People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; see also *Fortman v. Hemco, Inc.* (1989) 211 Cal.App.3d 241, 254 [nothing "inherently implausible about . . . testimony to justify disregarding it under the substantial evidence rule"].) This is not the case here. To the contrary, Mother's testimony regarding the motive for her relocation is entirely consistent with the record as a whole, which supports

that Mother had numerous good faith reasons to want to return to the east coast.<sup>7</sup>

We must affirm if substantial evidence—even evidence contradicted by other evidence in the record—supports the court’s finding. (See *Albert T.*, *supra*, 144 Cal.App.4th at p. 216.) Mother’s testimony, which the trial court expressly found credible, supports the court’s finding of a good faith move, as does other evidence in the record that Mother had pre-existing family and career ties to the area as well as a job offer that made career and financial sense for her. Thus, that Hayes’s testimony, or the interview statements on which she relied,<sup>8</sup> contradict this evidence is not a basis for reversal. Put differently, Father’s contention that “there was evidence presented that a significant reason for this move was to reduce the minor child’s contact with [Father]” is irrelevant when reviewing for substantial evidence.

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<sup>7</sup> Father argues that the court discredited Hayes’s conclusion because the court was “frustrated by what it saw as Hayes usurping its role as finder of fact,” citing the court’s discussion of Hayes’s testimony regarding Father’s kidnapping conviction. Father further argues that the court incorrectly characterized this testimony from Hayes, because Hayes did not offer an opinion regarding Father’s guilt or innocence in that prior criminal proceeding. We need not resolve this issue, however, because even if Father is correct, this would not render the court’s credibility determination inherently implausible.

<sup>8</sup> Father erroneously refers to these statements by Migalska, as summarized by Hayes, as Migalska’s “testimony,” which, of course, they are not. Even if Migalska had offered testimony supporting the statements Hayes attributed to Migalska, however, Father’s arguments would fail for the same reasons outlined above.

We look instead to whether the record contains any reliable evidence that supports the court's finding to the contrary. It plainly does.

Father also argues that there is undisputed evidence supporting that Mother's move to Washington, D.C., was "premeditated" for many months, even years. But the fact that the move was something Mother had been considering for a long time does not establish bad faith or that Mother was using the relocation to keep the child away from Father. To the contrary, it is consistent with Mother's testimony that the move was related to her ties to the area and a job opportunity, neither of which would materialize suddenly.

Father identifies no other basis on which we could conclude that the trial court abused its discretion in concluding that Mother's relocation or the custody judgment more broadly was in the child's best interests.<sup>9</sup>

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<sup>9</sup> In his reply brief, Father appears to possibly be arguing that the trial court abused its discretion by ignoring other conclusions in Hayes's testimony that, according to Father, would support a judgment in Father's favor. Even if it were clear which testimony Father is relying on, we would not need to consider this argument, as Father failed to raise it in his opening brief. (See *People v. Baniqued* (2000) 85 Cal.App.4th 13, 29 ["a point raised for the first time [in the reply brief] is deemed waived and will not be considered, unless good reason is shown for failure to present it before"].) In any event, this argument would fail for the same reasons discussed above in connection with Hayes's testimony about the motivation for Mother's move to Washington, D.C.: The record reflects the court did not ignore Hayes's testimony, but rather gave it little credibility, a decision on which we must defer to the trial court. Substantial evidence

Accordingly, we affirm.

**DISPOSITION**

The judgment is affirmed. Respondent shall recover her costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

BENDIX, J.

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in the record otherwise supports the trial court's conclusions contrary to Hayes's discredited testimony. Father does not offer any basis on which to conclude that this other evidence is somehow insufficient, and ours is not to weigh conflicting evidence on appeal.